

2003 DRAFTING REQUEST**Bill**Received: **09/09/2003**Received By: **pkahler**Wanted: **Soon**

Identical to LRB:

For: **Legislative Reference Bureau**By/Representing: **PJK**This file may be shown to any legislator: **NO**Drafter: **pkahler**

May Contact:

Addl. Drafters: **rmarchan**Subject: **Insurance - miscellaneous**Extra Copies: **CMH**Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Annuity nonforfeiture value minimum guarantee rate indexing

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 09/22/2003	wjackson 09/25/2003		_____			
/P1			pgreensl 09/25/2003	_____	lemery 09/25/2003		
/P2	pkahler 10/29/2003	wjackson 10/29/2003	jfrantze 10/29/2003	_____	sbasford 10/29/2003		

FE Sent For:

<END>

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/?	pkahler	/pl WLj 9/25					
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P8 P8/ch

FE Sent For:

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Attachment 2

Section 1. 632.435 (1) of the statutes is amended to read:

632.435 (1) In the case of contracts issued on or after the operative date of this section as defined in sub. (12), no contract of annuity shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contract holder:

am (a) Upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the company ~~will~~ shall grant a paid-up annuity on a plan stipulated in the contract of such value as is specified in subs. (5) to (8) and (10).

am (b) If a contract provides for a lump sum settlement at maturity or at any other time, upon surrender of the contract at or prior to the commencement of any annuity payments, the company will ~~shall~~ pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subs. (5), (6), (8) and (10). The company ~~shall~~ may reserve the right to defer the payment of such cash surrender benefit for a period of not to exceed 6 months after demand therefor with surrender of the contract: after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral.¹

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

(e) Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of 2 years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than \$20 monthly, the company may terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for

¹ Six-month deferral requires written request and approval of Commissioner. This provision was added to provide regulatory oversight of any deferral of a cash surrender benefit.

determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligations under such contract.

Section 2. 632.435 (4) of the statutes is amended to read:

632.435 (4) The minimum values as specified in subs. (5) to (8) and (10) of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as follows:

am (a) ~~With respect to contract providing for flexible considerations, the~~ The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest of ~~3% per year of percentages as indicated in par. (c) of the net considerations paid prior to such time, decreased by the sum of any prior withdrawals or partial surrenders of the contract accumulated at a rate of interest of 3% per year and the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract.~~ The net considerations for a given contract year for purposes of this subsection shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during the contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65% of the net consideration for the first contract year and 87.5% of the net considerations for the 2nd and later contract years, except that the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than 2 times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65%. all of the following :

* (8) be ?

- cr 1. Any prior withdrawals from or partial surrenders of the contract accumulated at a rates of interest as indicated in par. (c); and
- cr 2. An annual contract charge of \$50, accumulated at rates of interest as indicated in par. (c); and²
- a 3. Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated in par. (c); and³
- a 4. The amount of any indebtedness to the company on the contract, including interest due and accrued.

² A \$50 annual contract charge replaces a variety of charges in the original act that varied from \$30 plus \$1.25 per consideration received lesser of \$30 and 10% of annual consideration, and \$75 at issue, depending on the nature of the contract considerations.

³ The offset for the premium tax recognizes that these monies are not available to the company and therefore cannot be returned to the contract owner.

RP (b)
CR (bm)

(b) The net considerations for a given contract year for purposes of this subsection shall be an amount equal to eighty-seven and one-half percent (87.5%) of the gross considerations credited to the contract during the contract year.⁴

(c) ~~With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually except that:~~

(1) ~~The portion of the net consideration for the first contract year to be accumulated shall be the sum of 65% of the net consideration for the first contract year plus 22.5% of the excess of the net consideration for the first contract year over the lesser of the net considerations for the 2nd and 3rd contract years.~~

(2) ~~The annual contract charge shall be the lesser of \$30 or 10% of the gross annual consideration.~~

(c) ~~With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to 90% and the net consideration shall be the gross consideration less a contract charge of \$75.~~

(d) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:

1. The five-year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than fifteen (15) months prior to the contract issue date or redetermination date under par. (c) 4. below;

2. Reduced by 125 basis points;

3. Where the resulting interest rate is not less than one percent (1%); and

4. The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a

⁴ Accumulation of 87.5% of gross considerations replaces prior percentages that ranged from 65% to 90%. For all contracts that permit considerations to be paid in over the term of the contract, the adoption of an 87½% accumulation basis represents an increase in the funds eligible for accumulation. For single consideration contracts the nominal decrease is from 90% to 87½%; however, it was common practice to provide the right to add additional considerations to all contracts which led to lower minimum accumulation bases.

specified period that produces the value of the five-year Constant Maturity Treasury Rate to be used at each redetermination date.⁵

(e) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in par. (c) 2. above by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

(f) The commissioner may adopt rules to implement the provisions of par. (d) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.⁶

Section 3. 632.435 (5) of the statutes is amended to read:

632.435 (5) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract. ←

Section 4. 632.435 (12) of the statutes is amended to read:

632.435 (12) ~~After November 8, 1977, [insert the effective date], any company may file with the commissioner a written notice of its election to comply with this section after a specified date elect to apply its provisions to annuity contracts on a contract form-by-contract form basis before the 2nd anniversary of November 8, 1977 [insert the effective date]. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, In all other instances, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be after the 2nd anniversary of November 8, 1977 [insert effective date].~~⁷

⁵ Required interest rate is the lower of 3% and an index based on the 5-year Constant Maturity Treasury rate less 1.25%, but in no event less than 1%. This provision provides an option to utilize an interest index basis for the minimum nonforfeiture requirement; however, it is only operative when the Treasury index approach produces a rate below 3%. In all other circumstances, the prior model requirement of 3% is maintained.

⁶ These provisions allow additional reductions in the required interest rate from equity-indexed annuities. The additional reduction, which cannot reduce the required rate below 1%, is provided to provide sufficient margin to enable equity-indexed annuities, which must recognize the additional cost of the equity guarantee, to remain available in low interest rate environments.

⁷ This provision provides a 2-year window from law effective date for contract-by-contract conversion to the new law. A 2-year window is provided to assist in an orderly transition from the current law requirements and, in

particular, to avoid a deluge of contract approval requests of the insurance department in a limited period of time were a single required effective date to be adopted.



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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TO: Merwin Stewart, Chair
Life Insurance and Annuities (A) Committee

FROM: Michael Batte, Chair
Life and Health Actuarial Task Force

DATE: March 8, 2003

SUBJECT: Project History of Revisions to the "Standard Nonforfeiture Law for Individual Deferred Annuities ("Model")"

At its meeting on Friday, March 7, 2003, the Life and Health Actuarial Task Force ("Task Force") voted to recommend that the Life Insurance and Annuities (A) Committee adopt the Model. In order to assist the A Committee in its review of this document, I am submitting the following brief project history. Please feel free to contact me if you have additional questions.

1) What issues was the project intended to address?

At the Executive Committee and Plenary Meeting in San Antonio, Texas, on February 8, 2002, the issue of the appropriate interest rate to incorporate into Section 4 of the Model was discussed. The following excerpt from the minutes summarizes that discussion:

Commissioner Koken, vice chair of the Life Insurance and Annuities (A) Committee, stated that the A Committee has been reviewing the issue of the minimum nonforfeiture rate on annuities. It is currently 3%, which in the current economic climate means that companies may have to take some products off the market because they can't invest at that rate, or there will be real solvency concerns. The recommendation from the A Committee is to support the industry in their efforts to go to the legislatures and ask for a reduction in the nonforfeiture rate to 1.5% and to give a charge to the Life and Health Actuarial Task Force to develop a long-term solution to this issue. The group believes that ultimately an indexed rate is the best response so that as the economy changes it will not be necessary to go back to the legislatures.

The minutes of that meeting further show that the following motion was adopted: "Recommend that the states support a 1.5% nonforfeiture with a sunset of July 1, 2004 and a charge to develop an indexed rate."

In a subsequent discussion of the Task Force, the project was defined to include the following general scope (as captured in the Life and Health Actuarial Task Force minutes from March 14-15, 2002):

William Schreiner (ACLI) reported that the ACLI has a committee studying this matter, and that committee is looking for the Task Force's input on areas to study. He said "it is fair that you will want to look at more than just the interest rate." A lengthy, wide-ranging discussion ensued on how to proceed. Mr. Hartnedy summarized the discussion by saying that three potential areas of inquiry had been identified: 1) "You've got to carefully consider in the change of any minimum guarantees the surrender charge;" 2) "We're very interested in a dynamic or, if you will, index rate"; and 3) "We want pros and cons as to impact on people in different circumstances by doing this." Mr. Gorski suggested "maybe there is a need to think about disclosure at the same time." Mr. Schreiner added that "all the elements of the (nonforfeiture) 'formula' will be in play."

2) What states participated in drafting the model?

The following states are currently members of the Task Force: New Mexico (Chair), Arkansas (Vice-Chair), California, Connecticut, Florida, Illinois, Minnesota, Nebraska, New York, Oklahoma, Pennsylvania, Texas, Utah, and Vermont.

3) What general procedure was followed in drafting the model? What efforts were made to assure that all interested parties were provided an opportunity to comment during the drafting process?

The efforts of the Task Force were closely coordinated with all industry interested parties. In addition to open sessions at the quarterly meetings of the NAIC, seven conference calls were held over the last year to discuss the various submissions and drafts of the Model. Notice of those conference calls was posted on the NAIC's home page on the Internet and e-mailed to approximately 200 regulators and interested parties, including representatives of the American Council of Life Insurers, the National Alliance of Life Companies, the National Fraternal Congress of America, and the American Academy of Actuaries (AAA).

4) What significant issues were raised during the drafting process, and how were those issues resolved?

Given this complexity of this topic and the myriad of opinions, it is impossible to put together a brief description which captures a) all of the issues raised and b) all of the detail underlying those issues. Any summary will of necessity be a broad overview and will omit numerous particulars of the project. However, I believe that the items below represent the major points of discussion:

A) Is there really a need to change the Model?

Many regulators expressed doubts regarding whether there was a need to change the Model. This excerpt from Frank Dino's (Florida Department of Financial Services) summary of the October 10, 2002, conference call of the Task Force summarized the basic nature of those concerns:

Some of the previously expressed doubts regarding whether a problem actually exists in the current nonforfeiture law were repeated. It was noted that the current law allows initial expense loads of 35% and 10% for flexible premium and single premium products, respectively. Even ignoring annual expense charges, it would take fifteen years and four years, respectively, for the minimum values to match the

original deposit, assuming the minimum 3% were credited each year. It was also noted almost all states interpret the existing law as imposing a cumulative standard, rather than requiring that a minimum interest credit of 3% be applied each year. This gives companies the ability to credit less than 3% some years (provided they can still meet the cumulative requirement).

Ultimately, a consensus emerged on the Task Force that changes to the Model should be made. The distinct expense loads for flexible premium and single premium products were eliminated, and replaced by a single standard of 12.5%. In its first draft Model submitted on August 22, 2002, the ACLI suggested 15%. However, subsequent discussions resulted in the compromise figure of halfway between the existing 10% standard for single premium annuities and the ACLI's proposed 15%.

B) What should be the basis of the index used in establishing the minimum nonforfeiture interest rate?

Early on in this project, it became clear that there is no economic or actuarial theory that makes any one index the obvious choice over another. The following suggestions were among the many received:

In correspondence received on May 24, 2002, the ACLI suggested the following:

Proposal: five-year constant maturity treasuries (CMT) is proposed as the basis of required minimum interest rate credits.

Rationale: the use of a CMT basis has the virtue of expected continuous availability, while the choice of a five-year basis lies between short and longer-term maturities.

The ACLI provided this commentary with the submission of their initial proposal for actual draft language on August 22, 2002: "The interest rate proposed is the Five-Year Constant Maturity Treasury rate (CMT) as of June 30 of the preceding calendar year minus two and one-half percent (2.5%), but not greater than four percent (4%) nor less than one percent (1%)."

In a submission dated November 13, 2002, the ACLI modified its proposal as follows: "Index Basis: 3 Year Constant Maturity Treasury (monthly) rate – minus 150 basis points, but not less than 1%."

In a submission dated January 22, 2003, the ACLI made the following recommendation: "Therefore, we urge that the index basis in the proposed model Individual Deferred Annuity Nonforfeiture Law be changed to the three-year CMT reduced by 125 bps."

In a submission labeled "Preliminary Draft" dated September 10, 2002, the AAA stated that "an index rate for the annuity non-forfeiture value can be based on either the Treasury Curve, The Swap Curve (or) somewhere on any myriad of credit curves." The submission includes a description of how LIBOR swap rates might be used:

Under this approach we define the Non-Forfeiture Interest Rate (NIR) as equal to the Applicable Swap Rate less X. The Applicable Swap Rate is the monthly average swap rate for a swap whose term is equal to the term of the guarantee period for the premium/renewal (rounded up to the next whole year) during the month the premium is received or the renewal rate is set.

Many other comments were provided relative to the appropriate choice of an index, as well as a) what reductions to the index should be made to recognize company expenses and b) maximum and minimum limits on the interest rates.

In reaching a decision, the Life and Health Actuarial Task Force concluded that the Five-Year CMT less 125 basis points provides a reasonable balance between 1) giving companies relief in times of low interest rates and 2) providing an appropriate minimum guarantee for the consumer. Also, a consensus seemed to emerge on the Task Force in agreement with the position expressed in the January 22, 2003, submission from the ACLI: "The primary goal of the law's revision is to provide a means to permit lower interest rate guarantees than the current law allows in low interest rate environments." Accordingly, a cap equal to the existing 3% interest rate was established. However, in order to provide some minimum level of guarantee to the consumer, a floor of 1% was also established. Finally, flexibility was provided to the companies by allowing for the redetermination of the minimum interest guarantees on a periodic basis.

C) Should a lower minimum nonforfeiture interest rate be allowed for equity-indexed annuities?

This matter was not raised in a substantive way by any of the interested parties until the Task Force meeting in December 2002. Subsequently, a report was received from the AAA (dated January 27, 2003) that recommended the following: "The Academy of Actuaries recommends that an offset for Equity Indexed Annuities be allowed. The Academy strongly believes there is a need for an offset as long as the product provides a meaningful equity participation guarantee."

The Task Force agreed with this recommendation, and inserted the following language into the Model:

During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in Subsection B(2) above by up to an additional 100 basis points to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date thereafter, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

The commissioner may adopt rules to implement the provisions of Section 4C and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

Several members of the Task Force expressed a desire that a model regulation be developed to assist the states in implementing this provision.

5) What are the implications of this project for accreditation and codification?

Since this project does not deal with solvency monitoring, there is no impact for accreditation and codification.

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(d) Except as provided in pars. (e) and (f), the interest rate used to determine the minimum nonforfeiture amounts is the lower of the following:

1. 3 percent.
2. The monthly yield on actively traded U.S. Treasury securities, adjusted to a constant maturity of 5-years, as published by the Federal Reserve Board on any date occurring during the 15 months preceding issuance of the contract, less 1.25 percent, or an average monthly yield on actively traded U.S. Treasury securities, adjusted to a constant maturity of 5-years, as determined from consecutive monthly yields published by the Federal Reserve Board during the 15 months preceding issuance of the contract, less 1.25 percent.
3. If the contract provides substantive participation in an equity indexed benefit, the monthly yield on actively traded U.S. Treasury securities, adjusted to a constant maturity of 5-years, as published by the Federal Reserve Board on any date occurring during the 15 months preceding issuance of the contract, less an amount, up to 2.25 percent, specified in the contract or an average monthly yield on actively traded U.S. Treasury securities, adjusted to a constant maturity of 5-years, as determined from consecutive monthly yields published by the Federal Reserve Board during the 15 months preceding issuance of the contract, less an amount, up to 2.25 percent, specified in the contract.

- (e)
1. The interest rate determined under par. (d) may not be less than 1 percent.
 2. For purposes of par. (d) 2., if the contract permits redetermination of the interest rate used to determine nonforfeiture amounts, the date of the redetermination shall be considered the date of issuance of the contract.

(f) The commissioner shall promulgate rules for the administration of par. (d). The rules shall impose reasonable limits on the reduction authorized under par. (d) 3. and may authorize methods for determining the minimum nonforfeiture amounts in addition to those specified in par. (d).



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3254/3
PJK&RJM: /.....
WLS

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SOON
(in 9-22)
D-note

gen cat

1 AN ACT[✓]; relating to: interest rate for deferred annuity minimum nonforfeiture
2 amounts.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 632.435 (1) (a)[✓] of the statutes is amended to read:
4 632.435 (1) (a) Upon cessation of payment of considerations under a contract,
5 or upon the written request of the contract owner[✓], the company will shall grant a
6 paid-up annuity on a plan stipulated in the contract of such value as is specified in
7 subs. (5) to (8) and (10).

History: 1977 c. 153; 1979 c. 110 s. 60 (13).

8 SECTION 2. 632.435 (1) (b)[✓] of the statutes is amended to read:
9 632.435 (1) (b) If a contract provides for a lump sum settlement at maturity or
10 at any other time, upon surrender of the contract at or prior to the commencement

1 of any annuity payments, the company ~~will~~ shall pay in lieu of any paid-up annuity
2 benefit a cash surrender benefit of such amount as is specified in subs. (5), (6), (8),
3 and (10). The company ~~shall~~ may reserve the right to defer the payment of such cash
4 surrender benefit, for a period of not exceeding 6 months after demand therefor with
5 surrender of the contract, if the company receives written approval from the
6 commissioner upon the company's written request, which shall address the deferral's
7 necessity and equitability to all policyholders.

History: 1977 c. 153; 1979 c. 110 s. 60 (13).

8 **SECTION 3.** 632.435 (4) (a) of the statutes is renumbered 632.435 (4) (a) (intro.) ✓

9 and amended to read:

10 632.435 (4) (a) (intro.) ~~With respect to contracts providing for flexible~~
11 ~~considerations, the~~ The minimum nonforfeiture amount ~~at, or at any time at or prior~~
12 ~~to~~ the commencement of any annuity payments shall be equal to an accumulation
13 up to such time, at a rate one or more rates of interest of ~~3% per year of percentages~~
14 as indicated in par. (d), of the net considerations paid prior to such time, decreased
15 by the sum of any all of the following:

16 1. Any prior withdrawals from or partial surrenders of the contract
17 accumulated at a rate one or more rates of interest of ~~3% per year and the~~ as indicated
18 in par. (d).

19 4. The amount of any indebtedness to the company on the contract, including
20 interest due and accrued, ~~and increased by any existing additional amounts credited~~
21 ~~by the company to the contract. The net considerations for a given contract year for~~
22 ~~purposes of this subsection shall be an amount not less than zero and shall be equal~~
23 ~~to the corresponding gross considerations credited to the contract during the contract~~
24 ~~year less an annual contract charge of \$30 and less a collection charge of \$1.25 per~~

~~consideration credited to the contract during that contract year. The percentages of net considerations shall be 65% of the net consideration for the first contract year and 87.5% of the net considerations for the 2nd and later contract years, except that the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than 2 times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65%.~~

History: 1977 c. 153; 1979 c. 110 s. 60 (13).

SECTION 4. 632.435 (4) (a) 2. [✓] of the statutes is created to read:

632.435 (4) (a) 2. An annual contract charge of \$50, accumulated at one or more rates of interest as indicated in par. (d). [✓]

SECTION 5. 632.435 (4) (a) 3. [✓] of the statutes is created to read:

632.435 (4) (a) 3. Any premium tax paid by the company for the contract, accumulated at one or more rates of interest as indicated in par. (d). [✓]

SECTION 6. 632.435 (4) (b) [✓] of the statutes is repealed.

SECTION 7. 632.435 (4) (bm) [✓] of the statutes is created to read:

632.435 (4) (bm) For purposes of this subsection, the net considerations for a given contract year shall be an amount equal to 87.5 percent of the gross considerations credited to the contract during that contract year.

SECTION 8. 632.435 (4) (c) [✓] of the statutes is repealed.

SECTION 9. 632.435 (4) (d) [✓] of the statutes is created to read:

632.435 (4) (d) Except as provided in pars. (e) and (f), [✓] the interest rate used to determine minimum nonforfeiture amounts shall be the lower of 3 percent and either of the following:

1. Except as provided in subd. 2., [✓] the monthly yield on actively traded U.S.

²⁴ Treasury securities, adjusted to a constant maturity of 5 years, as published by the

1 federal reserve board on any date occurring during the 15 months preceding issuance
2 of the contract, less 1.25 percent, or an average monthly yield on actively traded U.S.
3 Treasury securities, adjusted to a constant maturity of 5 years, as determined from
4 consecutive monthly yields published by the federal reserve board during the 15
5 months preceding issuance of the contract, less 1.25 percent.

6 2. If the contract provides substantive participation in an equity indexed
7 benefit, the monthly yield on actively traded U.S. Treasury securities, adjusted to a
8 constant maturity of 5 years, as published by the federal reserve board on any date
9 occurring during the 15 months preceding issuance of the contract, less an amount,
10 up to 2.25 percent, specified in the contract.

11 SECTION 10. 632.435 (4) (e) of the statutes is created to read:

12 632.435 (4) (e) 1. The interest rate determined under par. (d) may not be less
13 than 1 percent.

14 2. For purposes of par. (d) 1., if the contract permits redetermination of the
15 interest rate used to determine nonforfeiture amounts, the date of the
16 redetermination shall be considered the date of issuance of the contract.

17 SECTION 11. 632.435 (4) (f) of the statutes is created to read:

18 632.435 (4) (f) The commissioner may promulgate rules for the administration
19 of par. (d) and to provide adjustments to the calculation of minimum nonforfeiture
20 amounts under par. (d) 2. and for other contracts for which the commissioner
21 determines that adjustments are justified.

22 SECTION 12. 632.435 (5) of the statutes is amended to read:

23 632.435 (5) Any paid-up annuity benefit available under a contract shall be
24 such that its present value on the date annuity payments are to commence is at least
25 equal to the minimum nonforfeiture amount on that date. Such present value shall

be computed using the mortality table, if any, and the interest rate or rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

History: 1977 c. 153; 1979 c. 110 s. 60 (13).

SECTION 13. 632.435 (12)[✓] of the statutes is amended to read:

632.435 (12) After November 8, 1977 the effective date of this subsection
[revisor inserts date], any company may file ~~with the commissioner a written notice~~
of its election elect to comply with this section ~~after a specified date on a contract~~
~~form-by-contract form basis~~ before the 2nd anniversary of November 8, 1977. After
the filing of such notice, then upon such specified date, which shall be the operative
date of this section for such company the effective date of this subsection [revisor
inserts date]. In all other instances, this section shall become operative with respect
to annuity contracts thereafter issued by such company. If a company makes no such
election, the operative date of this section for such company shall be on or after the
2nd anniversary of November 8, 1977 the effective date of this subsection [revisor
inserts date].

History: 1977 c. 153; 1979 c. 110 s. 60 (13).

for this subsection
*****NOTE: The effect of the proposed language is unclear to me. Do the new provisions only apply to annuity contracts issued by a company that elects to use the new provisions for some annuity contracts before the second anniversary of the effective date? By limiting the last sentence to "such company" the language seems to say that the new provisions only apply to companies that elect to use them before the second anniversary. "In all other instances" seems to conflict with this interpretation, however. Is the intention to require all companies to comply with the provisions with respect to all annuity contracts issued on or after the second anniversary?

Additionally, since we are changing only some of the provisions, it would be better to have a nonstatutory initial applicability or delayed effective date provision, or both, that would apply only to the provisions that are being changed.

(END)

D. note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3254/dn
PJK/PJM:.....

"RJM" out

This is part 3 of OCI's omnibus bill. It is a rough, preliminary draft without an analysis. Rob Marchant was kind enough to help with the interest rate language in s. 632.435 (4) (d) and (e).↓

The proposed language repeatedly referred to "rates of interest." If the interest rate is redetermined, will the new rate apply exclusively or only for the period after it is redetermined (and until the rate is redetermined again, if ever)? Will the intended change to the minimum nonforfeiture amount interest rate result in one interest rate for a contract, one or more interest rates, or always more than one interest rate?

Note the cross-reference to s. 632.435 in s. 632.45 (1). Is this cross-reference still okay?

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3254/P1dn
PJK:wlj:pg

September 25, 2003

This is part 3 of OCI's omnibus bill. It is a rough, preliminary draft without an analysis. Rob Marchant was kind enough to help with the interest rate language in s. 632.435 (4) (d) and (e).

The proposed language repeatedly referred to "rates of interest." If the interest rate is redetermined, will the new rate apply exclusively or only for the period after it is redetermined (and until the rate is redetermined again, if ever)? Will the intended change to the minimum nonforfeiture amount interest rate result in one interest rate for a contract, one or more interest rates, or always more than one interest rate?

Note the cross-reference to s. 632.435 in s. 632.45 (1). Is this cross-reference still okay?

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

Emery, Lynn

From: Emery, Lynn
Sent: Thursday, September 25, 2003 3:36 PM
To: Guidry, Jim
Subject: LRB-3254/P1 & P1dn (attached from PJK)



03-3254/P1



03-3254/P1dn

Lynn Emery
Program Assistant
Legislative Reference Bureau
608-266-3561
lynn.emery@legis.state.wi.us

Kahler, Pam

From: Guidry, Jim
Sent: Tuesday, October 14, 2003 9:04 AM
To: Kahler, Pam
Cc: Nepple, Fred
Subject: Annuity Nonforfeiture - Response to Preliminary

Pam here are some comments from Northwestern Mutual on the annuity minimum nonforfeiture piece. Would you be available to meet with us this week?

Thanks for all your help.

Jim

Memorandum

To: Jim Guidry
From: Steve Radke
CC: Chris Trost, Jim Koelbl
Date: September 30, 2003
Re: LRB-3254/P1 (Deferred Annuity Minimum Nonforfeiture Amounts)

This memo is in response to the preliminary draft referenced above, intended to implement in Wisconsin the recently adopted revisions to the NAIC "Standard Nonforfeiture Law for Individual Deferred Annuities Model."

In the draft itself and the accompanying September 25th "Drafter's Note" from Pam Kahler, several questions were raised. I forwarded these questions to Chris Trost, our Senior Actuary, who has been monitoring this issue at the NAIC, and Jim Koelbl, Assistant General Counsel, from our Law Department. Our response to those questions follow.

From September 25th Drafters Note

Ms. Kahler asked:

The proposed language repeatedly refers to "rates of interest." If the interest rate is redetermined, will the new rate apply exclusively or only for the period that after it is redetermined (and until the redetermination, if ever)? Will the intended change to the minimum nonforfeiture amount interest rate result in one rate for a contract, one or more rates, or always more than one interest rate?

According to Chris, if the rate is redetermined the new rate will apply for the period after the rate was redetermined until the rate is redetermined again. How the rate is redetermined -- including the frequency of redetermination -- must be specified in the contract.

Chris noted it is possible to design a contract such that the rate is never redetermined. So it is possible that one rate always applies. So the change to the law will result in "one or more rates of interest." Again how the rate is redetermined must be spelled out in the contract. Once in a contract, a company does not have the discretion to change the procedures for that contract.

10/14/2003

Ms. Kahler also asked if the cross-reference to s. 632.435 in s. 632.45(1) was still okay. In our opinion, yes, this cross-reference is still appropriate.

From Preliminary Draft

There was also a question at the end of the draft of the proposed law. It states:

*** NOTE: The effect of the proposed language for this subsection is unclear to me. Do the new provisions apply only to annuity contracts issued by a company that elects to use the new provisions for some annuity contracts before the second anniversary of the effective date? By limiting the last sentence to "such company" the language seems to say the new provisions apply only to companies that elect to use them before the second anniversary. "In all other instances" seems to conflict with the interpretation, however. Is the intention to require all companies to comply with the provisions with respect to all annuity contracts issued on or after the second anniversary?

Additionally, since we are changing only some of the provisions, it would be better to have a nonstatutory initial applicability or delayed effective date provision, or both, that would apply only to the provisions that are being changed.

We believe the concerns raised by Pam can be addressed by changing the effective date provision, 632.435 (12), to more closely mirror the NAIC model language for the effective date section as follows:

Section 13. 632.435 (12) of the statutes is amended to read:

632.435 (12) After the effective date of this section . . . [revisor inserts date], a company may elect to apply its provisions to annuity contracts on a contract form-by-contract form basis before the 2nd anniversary of the effective date of this section . . . [revisor inserts date]. In all other instances, this section shall become operative with respect to annuity contracts issued by the company after the 2nd anniversary of the effective date of this section . . . [revisor insert date].

Note that the NAIC Model used "effective date of this Act." We changed this to "effective date of this section." The Wisconsin Preliminary Draft says "effective date of the subsection" in the first two instances and "effective date of this section" in the last instance, and we will defer to the Drafter as to which is technically correct.

no - last is subsection, also
By making this read more like the NAIC Model it is clear that the change in the law does not become operative until two years after the effective date of the law unless a company elects to apply the new rules within the first two years. This means that the old law remains operative for another 2 years unless a company elected to make the new rules operative earlier. This revised language also clarifies that the new rules become operative for all companies no later than the 2nd anniversary of the effective date of the law. *I disagree*

Our Comments on the Draft

Chris and Jim also raised several questions regarding the draft.

Chris wondered why the draft doesn't follow the model with respect to redetermination. The only reference in the proposed law to redetermination is 632.435(4)(e) which states "For purposes of par (d) 1., the contract permits redetermination of the interest rate used to determine nonforfeiture amounts, the date of the redetermination shall be the date of issuance of the contract." One could almost read this to indicate that a rate can only be "redetermined" at issue of the contract. He noted that this was not the intent of the model, and we believe section 4.B. of the model should be included in its entirety.

Jim also questioned some of the numbering. He noted that in the original draft Northwestern Mutual had prepared, 632.435 (4)(a) had the minimum nonforfeiture amount equal to an accumulation based on a formula and decreased by the sum of:

1. prior withdrawals,
2. \$50 contract fee,
3. premium tax, and
4. indebtedness.

The way the bill is currently drafted, Section 3 of the bill rennumbers and amends 632.435 (4)(a)(intro.), (4)(a)1 [prior withdrawals], and presumably (4)(a)4 [indebtedness]. Section 4 of the bill creates (4)(a)2 [contract fee], and Section 5 of the bill creates Section (4)(a)3 [premium tax].

While the end result is probably the same, the way the bill is currently drafted makes it very difficult to follow the way the resulting statute will ultimately read. While we are not sure if this is due to some drafting protocol we aren't familiar with, we speculate that this might just be an oversight, and thought we would bring it to your attention.

??

If you think it would be helpful, I would be happy to set up a meeting or phone call where you and/or Pam could discuss these, or any other comments, directly with Jim and Chris.

Thanks for your assistance on this issue.

Kahler, Pam

From: Nepple, Fred
Sent: Thursday, October 23, 2003 5:44 PM
To: Kahler, Pam
Subject: FW: Index draft



BDY.RTF

-----Original Message-----

From: steveradke@northwesternmutual.com [mailto:steveradke@northwesternmutual.com]
Sent: Thursday, October 23, 2003 3:44 PM
To: Fred.Nepple@oci.state.wi.us
Subject: RE: Index draft

Fred:

Here is some language that Pam could use as a starting point for her analysis. Please let me know if you need anything else.

Thanks.

Steve

Current law requires use of a flat 3% interest rate for the calculation of minimum values to be provided to a contract holder upon annuitization or surrender of an individual deferred annuity contract. This bill replaces the flat interest rate with an indexed interest rate, following the approach adopted by the National Association of Insurance Commissioners Model Standard Nonforfeiture Law for Individual Deferred Annuities. The bill calls for the minimum interest rate to be determined by a formula tied to the five-year Constant Maturity Treasury Rate reported by the Federal Reserve.

-----Original Message-----

From: Fred.Nepple [mailto:Fred.Nepple@oci.state.wi.us]
Sent: Thursday, October 23, 2003 9:01 AM
To: Fred.Nepple; RADKE, STEVE
Subject: Index draft

Steve:

Pam had difficulty translating NML's memo expressing concerns about how her draft stated the formula for indexing. I am preparing a draft for her reflecting NML's comments. I will forward my draft to her and to you so your attorneys can tell me how close I got as soon as I am done this morning.

However meanwhile it would be helpful to Pam if you could ask your attorneys

or actuary to do a "plain language" explanation of this legislation that she can use as the start for her analysis. She hasn't written that yet and I suspect your help would expedite the draft getting done.

I think this is the last item to wrap up drafting.

Kahler, Pam

From: Nepple, Fred
Sent: Thursday, October 23, 2003 5:44
To: Kahler, Pam
Subject: Formula
Pam:

Here is my crack at it. I tried to keep as close to the model as possible, particularly the sequencing, while incorporating your drafting changes. Also I deviated from the approach of NML's draft by doing wholesale reproof and recreate. Frankly I think it makes it easier for readers to follow (including me)-which will help on getting feedback. I incorporated your language in effect defining "constant maturity treasury rate" however I have not independently verified that the definition works-either as a technical description of the index (I assume you have) or in the context of the language. I think that needs further review by NML.

I've forwarded this to NML for feedback. I think your fix of the effective date is fine.

10/23/2003

SECTION Sections 632.435 (4) (a) to (c) are repealed and recreated to read:

632.435 (4) (a) The minimum nonforfeiture amount at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in pars. (c) to (e) of the net considerations paid prior to such time, decreased by the sum of the following:

1. Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in pars. (c) to (e).
2. An annual contract charge of \$50, accumulated at rates of interest as indicated in pars. (c) to (e).
3. Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated par. (c) to (e).
4. The amount of any indebtedness to the company on the contract, including interest due and accrued.

(b) For the purpose of this subsection:

1. The net considerations for a given contract year used to define the minimum non-forfeiture amount shall be an amount equal to 87.5% of the gross considerations credited to the contract during that contract year.
2. For the constant maturity treasury rate means the monthly yield on actively traded U.S. treasury securities, adjusted to a constant maturity of 5 years, as published by the federal reserve board, or an average monthly yield on actively traded U.S. treasury securities, adjusted to a constant maturity of 5 years, as published by the federal reserve.

(c) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lower of 3% per annum and the higher of the following:

1. The five-year constant maturity treasury rate, as published by the federal reserve board, as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under par. (d), less 1.25 percent or the percent reduction permitted under par. (e), whichever is greater.
2. One percent.

SECTION Sections 632.435 (d) to (f) are created to read:

632.435 (d) The interest rate determined under par. (c) shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date. The

interest rate determined under par. (c) shall be specified in the contract if the interest rate will be reset.

(e) If a contract provides substantive participation in an equity indexed benefit during the period or term, the reduction described in par. (c) 1 may be increased to not more than 2.25% to reflect the value of the equity index benefit. The present value at the contract issue date, and at each redetermination date, of the additional reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner determines that the demonstration is not acceptable.

(f) The commissioner may adopt rules to implement par. (e) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

Kahler, Pam

From: Nepple, Fred
Sent: Monday, October 27, 2003 8:36 AM
To: Kahler, Pam
Subject: FW: Index formula draft



BDY.RTF

Pam:

I won't have a chance to evaluate this until later this morning but thought I might as well pass it along to you right away. I'll get back to you on it this morning.

-----Original Message-----

From: steveradke@northwesternmutual.com [mailto:steveradke@northwesternmutual.com]
Sent: Friday, October 24, 2003 5:12 PM
To: Fred.Nepple@oci.state.wi.us
Subject: RE: Index formula draft

Fred:

Here are some initial thoughts from Jim.

Please don't ask me to explain this one...my eyes glazed over after three lines.

There is a problem with the wording in 632.435(e) that refers to "the reduction described in par. (c)1". In the NAIC Model law this says "the reduction described in Subsection B(2)". That worked because Subsection B(2) was the second of the four items that went into the calculation of the interest rate which was to be compared to 3%. In fact Subsection B(2) said "reduced by 125 basis points". In this context it makes sense to refer in 632.435(e) to the reduction mentioned in the prior section. But the Wisconsin version changed 632.435(c) to take out the four items of the calculation and by so doing removed the separate line that mentioned a reduction of 125 basis points. Instead in the Wisconsin version (c)1 is a number calculated using the treasury rate "less 1.25 percent or the percent reduction permitted under par.(e) whichever is greater". I have a problem with calculating the par. (e) reduction by reference to (c)1 which requires the par. (e) reduction to calculate the par. (c)1 amount. This is circular reasoning. You have to know the par. (e) amount to calculate the par. (c)1 amount and you have to know the par. (c)1 amount to calculate the par. (e) amount. I think the way to fix this is to use the NAIC Model language for 632.435(c). That is what I used in the initial draft we sent to OCI.

I would suggest we not let getting this perfect slow us up from getting the bill introduced. We can always fine-tune at the exec.

Have a good weekend.

Steve

-----Original Message-----

From: Fred.Nepple [mailto:Fred.Nepple@oci.state.wi.us]
Sent: Thursday, October 23, 2003 5:49 PM
To: Fred.Nepple; RADKE, STEVE
Subject: Index formula draft

Steve:

Please find attached my effort to redraft this subsection to address both Chris and Jim's concerns and Pam's efforts. I tried to follow more closely the model structure and language. Please let me know if it works. A track change document back would be helpful. I note Pam in effect has inserted a definition of Constant Maturity Treasury Rate. This term is undefined in the model. I would appreciate it if Chris and Jim could verify the definition is technically correct. Also the language in the model regarding "average" rate is unclear to me and it might be helpful if one of the two could spare a moment to explain their understanding of that language. I have forwarded this to Pam.

Kahler, Pam

From: Nepple, Fred
Sent: Monday, October 27, 2003 4:34 PM
To: Kahler, Pam
Subject: Index draft 102603 My comment of NML e-mail



Index draft
102603.doc

SECTION Sections 632.435 (4) (a) to (c) are repealed and recreated to read:

632.435 (4) (a) The minimum nonforfeiture amount at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in pars. (c) to (e) of the net considerations paid prior to such time, decreased by the sum of the following:

1. Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in pars. (c) to (e).
2. An annual contract charge of \$50, accumulated at rates of interest as indicated in pars. (c) to (e).
3. Any premium tax paid by the company for the contract, accumulated at rates of interest as indicated par. (c) to (e).
4. The amount of any indebtedness to the company on the contract, including interest due and accrued.

(b) For the purpose of this subsection:

1. The net considerations for a given contract year used to define the minimum non-forfeiture amount shall be an amount equal to 87.5% of the gross considerations credited to the contract during that contract year.
2. For the constant maturity treasury rate means the monthly yield on actively traded U.S. treasury securities, adjusted to a constant maturity of 5 years, as published by the federal reserve board, or an average monthly yield on actively traded U.S. treasury securities, adjusted to a constant maturity of 5 years, as published by the federal reserve.

(c) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lower of 3% per annum and the higher of the following:

1. The five-year constant maturity treasury rate, as published by the federal reserve board, as of a date, or average over a period, rounded to the nearest 1/20th of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under par. (d), less a reduction of 125 basis points **or, if the contract provides substantive participation in an equity indexed benefit during the period or term, the contract may increase the reduction by up to an additional 100 basis points to reflect the value of the equity index benefit.**

2. One percent.

SECTION Sections 632.435 (d) to (f) are created to read:

632.435 (d) The interest rate determined under par. (c) shall apply for an initial period and may be redetermined for additional periods. The redetermination

date, basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date. The interest rate determined under par. (c) shall be specified in the contract if the interest rate will be reset.

(e) The present value at the contract issue date, and at each redetermination date, of the additional reduction under par. (c) 1 for substantive participation in an equity index benefit shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. The commissioner may disallow or limit the additional reduction if the commissioner determines that the demonstration is not acceptable.

(f) The commissioner may adopt rules to implement par. (e) and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

Kahler, Pam

From: Nepple, Fred
Sent: Tuesday, October 28, 2003 9:53
To: Kahler, Pam
Subject: NML
Pam:

I am still looking at the telephone meeting issue. However this is not high on the priority list so pleas don't delay the draft for it-just delete it.

Here is the response from MNL:

Hi Fred.

I will forward the latest version to Jim and Chris for review ASAP. As for the definition of constant maturity treasury, since you asked, here are Jim's thoughts:

I don't think there is a need for 632.435(b)2. Why define the constant maturity treasury? First of all I don't know that this paragraph correctly defines how the fed calculates the five year rate and secondly even if it is described correctly, what. The federal reserve publishes the constant maturity treasury rates for a variety of time periods. The five year rate happens to be one of the rates they publish. The insurer takes the five year rate as published by the federal reserve and applies it to the formula in 632.435(c)1. How the fed got that number is not important. What would happen if the five year rate the fed published was not done calculated in accordance with the definition set forth in 632.435(b)2? This provision is unnecessary and potentially problematic.

Again, I think the important thing now is to get this out of drafting so it can be introduced and a hearing scheduled. I am sure there will be a number of things need tweaking as the process moves forward.

Thanks again for all of your help.

Steve

10/28/2003

Kahler, Pam

From: Nepple, Fred
Sent: Tuesday, October 28, 2003 1:29 PM
To: Kahler, Pam
Subject: RE: Insert for nonforfeiture draft

Pam

The third sentence of par. (d) should be capitalized. Other than that I'd say go with it. As we've said more tinkering can be done later.

-----Original Message-----

From: Kahler, Pam
Sent: Tuesday, October 28, 2003 11:48 AM
To: Nepple, Fred
Subject: Insert for nonforfeiture draft

Fred:

Here is the last attempt. I asked Rob to once again review the language that I drafted from what you first sent; he marked it up, and I then added your fix for the circularity in the reduction. Please review it and let me know if any of it can be used. Both Rob and I readily acknowledge that this is "over our heads," so if you want to use any particular language, yours or even the original language that was sent over, at this point I will. Everyone is in such a rush that there does not appear to be time to get it right.

Pam

<< File: for fred >>



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3254/P
PJK&RJM:wlj:pg

v m is run

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Wad,
please

repeal



1 AN ACT *to repeal* 632.435 (4) (b) and 632.435 (4) (c); *to renumber and amend*
2 632.435 (4) (a); *to amend* 632.435 (1) (a), 632.435 (1) (b), 632.435 (5) and
3 632.435 (12); and *to create* 632.435 (4) (a) 2., 632.435 (4) (a) 3., 632.435 (4) (bm),
4 632.435 (4) (d), 632.435 (4) (e) and 632.435 (4) (f) of the statutes; **relating to:**
5 interest rate for deferred annuity minimum nonforfeiture amounts.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 632.435 (1) (a) of the statutes is amended to read:
7 632.435 (1) (a) Upon cessation of payment of considerations under a contract,
8 or upon the written request of the contract owner, the company ~~will~~ shall grant a
9 paid-up annuity on a plan stipulated in the contract of such value as is specified in
10 subs. (5) to (8) and (10).

1 **SECTION 2.** 632.435 (1) (b) of the statutes is amended to read:

2 632.435 (1) (b) If a contract provides for a lump sum settlement at maturity or
3 at any other time, upon surrender of the contract at or prior to the commencement
4 of any annuity payments, the company ~~will~~ shall pay in lieu of any paid-up annuity
5 benefit a cash surrender benefit of such amount as is specified in subs. (5), (6), (8),
6 and (10). The company ~~shall~~ may reserve the right to defer the payment of such cash
7 surrender benefit, for a period of not exceeding 6 months after demand therefor with
8 surrender of the contract, if the company receives written approval from the
9 commissioner upon the company's written request, which shall address the deferral's
10 necessity and equitability to all policyholders.

11 **SECTION 3.** 632.435 (4) (a) of the statutes is renumbered 632.435 (4) (a) (intro.)
12 and amended to read:

13 632.435 (4) (a) (intro.) ~~With respect to contracts providing for flexible~~
14 ~~considerations, the~~ The minimum nonforfeiture amount at any time at or prior to the
15 commencement of any annuity payments shall be equal to an accumulation up to
16 such time, at a rate ~~one or more rates~~ of interest of ~~3% per year of percentages as~~
17 indicated in par. (d), of the net considerations paid prior to such time, decreased by
18 the sum of any all of the following:

19 1. Any prior withdrawals from or partial surrenders of the contract
20 accumulated at a rate ~~one or more rates~~ of interest of ~~3% per year and the~~ as indicated
21 in par. (d).

22 4. The amount of any indebtedness to the company on the contract, including
23 interest due and accrued, ~~and increased by any existing additional amounts credited~~
24 ~~by the company to the contract. The net considerations for a given contract year for~~
25 purposes of this subsection shall be an amount not less than zero and shall be equal

1 to the corresponding gross considerations credited to the contract during the contract
2 year less an annual contract charge of \$30 and less a collection charge of \$1.25 per
3 consideration credited to the contract during that contract year. The percentages of
4 net considerations shall be 65% of the net consideration for the first contract year and
5 87.5% of the net considerations for the 2nd and later contract years, except that the
6 percentage shall be 65% of the portion of the total net consideration for any renewal
7 contract year which exceeds by not more than 2 times the sum of those portions of
8 the net considerations in all prior contract years for which the percentage was 65%.

9 **SECTION 4.** 632.435 (4) (a) 2. of the statutes is created to read:

10 632.435 (4) (a) 2. An annual contract charge of \$50, accumulated at one or more
11 rates of interest as indicated in par. (d).

12 **SECTION 5.** 632.435 (4) (a) 3. of the statutes is created to read:

13 632.435 (4) (a) 3. Any premium tax paid by the company for the contract,
14 accumulated at one or more rates of interest as indicated in par. (d).

15 **SECTION 6.** 632.435 (4) (b) of the statutes is repealed.

16 **SECTION 7.** 632.435 (4) (bm) of the statutes is created to read:

17 632.435 (4) (bm) For purposes of this subsection, the net considerations for a
18 given contract year shall be an amount equal to 87.5 percent of the gross
19 considerations credited to the contract during that contract year.

20 **SECTION 8.** 632.435 (4) (c) of the statutes is repealed.

21 **SECTION 9.** 632.435 (4) (d) of the statutes is created to read:

22 632.435 (4) (d) Except as provided in pars. (e) and (f), the interest rate used to
23 determine minimum nonforfeiture amounts shall be the lower of 3 percent and either
24 of the following:

1 1. Except as provided in subd. 2., the monthly yield on actively traded U.S.
2 treasury securities, adjusted to a constant maturity of 5 years, as published by the
3 federal reserve board on any date occurring during the 15 months preceding issuance
4 of the contract, less 1.25 percent, or an average monthly yield on actively traded U.S.
5 treasury securities, adjusted to a constant maturity of 5 years, as determined from
6 consecutive monthly yields published by the federal reserve board during the 15
7 months preceding issuance of the contract, less 1.25 percent.

8 2. If the contract provides substantive participation in an equity indexed
9 benefit, the monthly yield on actively traded U.S. treasury securities, adjusted to a
10 constant maturity of 5 years, as published by the federal reserve board on any date
11 occurring during the 15 months preceding issuance of the contract, less an amount,
12 up to 2.25 percent, specified in the contract.

13 **SECTION 10.** 632.435 (4) (e) of the statutes is created to read:

14 632.435 (4) (e) 1. The interest rate determined under par. (d) may not be less
15 than 1 percent.

16 2. For purposes of par. (d) 1., if the contract permits redetermination of the
17 interest rate used to determine nonforfeiture amounts, the date of the
18 redetermination shall be considered the date of issuance of the contract.

*specific
minimum
contract?*

see (d) 4.

19 **SECTION 11.** 632.435 (4) (f) of the statutes is created to read:

20 632.435 (4) (f) The commissioner may promulgate rules for the administration
21 of par. (d) and to provide adjustments to the calculation of minimum nonforfeiture
22 amounts under par. (d) 2. and for other contracts for which the commissioner
23 determines that adjustments are justified.

24 **SECTION 12.** 632.435 (5) of the statutes is amended to read:

Insert 4-23

keep

632.435 (5) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate or rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

SECTION 13. 632.435 (12) of the statutes is amended to read:

632.435 (12) After November 8, 1977 the effective date of this subsection [revisor inserts date], any company may file with the commissioner a written notice of its election elect to comply with this section after a specified date on a contract form-by-contract form basis before the 2nd anniversary of November 8, 1977. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company the effective date of this subsection [revisor inserts date]. In all other instances, this section shall become operative with respect to annuity contracts thereafter issued ~~by such company~~. If a company makes no such election, the operative date of this section for such company shall be on or after the 2nd anniversary of November 8, 1977 the effective date of this subsection [revisor inserts date].

****NOTE: The effect of the proposed language for this subsection is unclear to me. Do the new provisions apply only to annuity contracts issued by a company that elects to use the new provisions for some annuity contracts before the second anniversary of the effective date? By limiting the last sentence to "such company," the language seems to say that the new provisions apply only to companies that elect to use them before the second anniversary. "In all other instances" seems to conflict with this interpretation, however. Is the intention to require all companies to comply with the provisions with respect to all annuity contracts issued on or after the second anniversary?

Additionally, since we are changing only some of the provisions, it would be better to have a nonstatutory initial applicability or delayed effective date provision, or both, that would apply only to the provisions that are being changed.

After contracts newly issued

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3254/P2ins
PJK&RJM:clj:ng

INSERT A

Under current law, the minimum amount that must be paid under an annuity contract (called the minimum nonforfeiture amount) is calculated by using an interest rate of ~~three~~³ percent. This bill changes the interest rate that is used to calculate the minimum nonforfeiture amount to an indexed rate that is based on the monthly yield on actively traded U.S. treasury securities, adjusted to a constant maturity of five years (five-year constant maturity treasury rate), as published by the federal reserve board. The actual rate used, however, may not exceed ~~three~~³ percent or be lower than ~~one~~¹ percent. If the contract so provides, the interest rate may be redetermined at different times during the term of the contract. Thus, the interest rate used over the term of the annuity contract may be the five-year constant maturity treasury rate at times and ~~three~~³ percent or ~~one~~¹ percent at other times.

(END OF INSERT A)

INSERT 4-23

1 ~~SECTION 4.~~[#] 632.435 (4) of the statutes is repealed and recreated to read:

2 632.435 (4) (a) In this subsection:

3 1. "Constant maturity treasury rate" means the monthly yield on actively
4 traded U.S. treasury securities, adjusted to a constant maturity of 5 years, as
5 published by the federal reserve board, or an average monthly yield on actively
6 traded U.S. treasury securities, adjusted to a constant maturity of 5 years, as
7 determined from consecutive monthly yields published by the federal reserve board.

8 2. "Net considerations" means, for a given contract year, an amount equal to
9 87 percent of the gross considerations credited to the contract during that contract
10 year.

11 (b) The minimum nonforfeiture amount at or prior to the commencement of any
12 annuity payments shall be equal to an accumulation up to such time, at one or more
13 rates of interest as indicated in pars. (c) to (e), of the net considerations paid prior
14 to such time, decreased by the sum of all of the following:

1 1. Any prior withdrawals from or partial surrenders of the contract
2 accumulated at one or more rates of interest as indicated in pars. (c) to (e).✓

3 2. An annual contract charge of \$50, accumulated at one or more rates of
4 interest as indicated in pars. (c) to (e).✓

5 3. Any premium tax paid by the company for the contract, accumulated at one
6 or more rates of interest as indicated in pars. (c) to (e).✓

7 4. The amount of any indebtedness to the company on the contract, including
8 interest due and accrued.✓

9 (c) The interest rate used to determine minimum nonforfeiture amounts shall
10 be an annual rate of interest that is the lower of 3 percent and the higher of either
11 of the following:

12 1. The 5-year constant maturity treasury rate, as specified in the contract, less
13 125 basis points or, if the contract provides substantive participation in an equity
14 indexed benefit during the period or term, the contract may increase the reduction
15 by up to an additional 100 basis points to reflect the value of the equity index benefit,
(16) whichever is less, and rounded to the nearest one-twentieth of ~~one~~¹ percent. If the
17 5-year constant maturity rate is a monthly yield, the rate shall be as published on
18 any date occurring during the 15 months before the contract issue date or
19 redetermination date under par. (d).✓ If the 5-year constant maturity rate is an
20 average monthly yield, the rate shall be as determined from consecutive monthly
21 yields published during the 15 months before the contract issue date or
22 redetermination date under par. (d).✓

23 2. One percent.

24 (d) The interest rate determined under par. (c) shall apply for an initial period
25 and may be redetermined for additional periods. The redetermination date, basis,

1 and period, if any, shall be stated in the contract. The basis is the date or average
2 over a specified period that produces the value of the 5-year constant maturity
3 treasury rate to be used at each redetermination date. The interest rate
4 determination under par. (c) shall be specified in the contract if the interest rate will
5 be reset.

6 (e) The present value at the contract issue date, and at each redetermination
7 date, of the additional reduction under par. (c) 1. for substantive participation in an
8 equity index benefit may not exceed the market value of the benefit. The
9 commissioner may require a demonstration that the present value of the additional
10 reduction does not exceed the market value of the benefit. The commissioner may
11 disallow or limit the additional reduction if the commissioner determines that the
12 demonstration is ~~not acceptable~~ ^{unacceptable}

13 (f) The commissioner may promulgate rules for the implementation of par. (e)
14 and to provide for further adjustments to the calculation of minimum nonforfeiture
15 amounts for contracts that provide substantive participation in an equity index
16 benefit and for other contracts for which the commissioner determines adjustments
17 are justified.

(END OF INSERT 4-23)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 632.435 (1) (a), 632.435 (1) (b), 632.435 (5) and 632.435 (12);
2 and *to repeal and recreate* 632.435 (4) of the statutes; **relating to:** interest
3 rate for deferred annuity minimum nonforfeiture amounts.

Analysis by the Legislative Reference Bureau

Under current law, the minimum amount that must be paid under an annuity contract (called the minimum nonforfeiture amount) is calculated by using an interest rate of 3 percent. This bill changes the interest rate that is used to calculate the minimum nonforfeiture amount to an indexed rate that is based on the monthly yield on actively traded U.S. treasury securities, adjusted to a constant maturity of five years (five-year constant maturity treasury rate), as published by the Federal Reserve Board. The actual rate used, however, may not exceed 3 percent or be lower than 1 percent. If the contract so provides, the interest rate may be redetermined at different times during the term of the contract. Thus, the interest rate used over the term of the annuity contract may be the five-year constant maturity treasury rate at times and 3 percent or 1 percent at other times.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 632.435 (1) (a) of the statutes is amended to read:

1 632.435 (1) (a) Upon cessation of payment of considerations under a contract,
2 or upon the written request of the contract owner, the company will shall grant a
3 paid-up annuity on a plan stipulated in the contract of such value as is specified in
4 subs. (5) to (8) and (10).

5 **SECTION 2.** 632.435 (1) (b) of the statutes is amended to read:

6 632.435 (1) (b) If a contract provides for a lump sum settlement at maturity or
7 at any other time, upon surrender of the contract at or prior to the commencement
8 of any annuity payments, the company will shall pay in lieu of any paid-up annuity
9 benefit a cash surrender benefit of such amount as is specified in subs. (5), (6), (8),
10 and (10). The company ~~shall~~ may reserve the right to defer the payment of such cash
11 surrender benefit, for a period of not exceeding 6 months after demand therefor with
12 surrender of the contract, if the company receives written approval from the
13 commissioner upon the company's written request, which shall address the deferral's
14 necessity and equitability to all policyholders.

15 **SECTION 3.** 632.435 (4) of the statutes is repealed and recreated to read:

16 632.435 (4) (a) In this subsection:

17 1. "Constant maturity treasury rate" means the monthly yield on actively
18 traded U.S. treasury securities, adjusted to a constant maturity of 5 years, as
19 published by the federal reserve board, or an average monthly yield on actively
20 traded U.S. treasury securities, adjusted to a constant maturity of 5 years, as
21 determined from consecutive monthly yields published by the federal reserve board.

22 2. "Net considerations" means, for a given contract year, an amount equal to
23 87 percent of the gross considerations credited to the contract during that contract
24 year.

1 (b) The minimum nonforfeiture amount at or prior to the commencement of any
2 annuity payments shall be equal to an accumulation up to such time, at one or more
3 rates of interest as indicated in pars. (c) to (e), of the net considerations paid prior
4 to such time, decreased by the sum of all of the following:

5 1. Any prior withdrawals from or partial surrenders of the contract
6 accumulated at one or more rates of interest as indicated in pars. (c) to (e).

7 2. An annual contract charge of \$50, accumulated at one or more rates of
8 interest as indicated in pars. (c) to (e).

9 3. Any premium tax paid by the company for the contract, accumulated at one
10 or more rates of interest as indicated in pars. (c) to (e).

11 4. The amount of any indebtedness to the company on the contract, including
12 interest due and accrued.

13 (c) The interest rate used to determine minimum nonforfeiture amounts shall
14 be an annual rate of interest that is the lower of 3 percent and the higher of either
15 of the following:

16 1. The 5-year constant maturity treasury rate, as specified in the contract, less
17 125 basis points or, if the contract provides substantive participation in an equity
18 indexed benefit during the period or term, the contract may increase the reduction
19 by up to an additional 100 basis points to reflect the value of the equity index benefit,
20 whichever is less, and rounded to the nearest one-twentieth of 1 percent. If the
21 5-year constant maturity rate is a monthly yield, the rate shall be as published on
22 any date occurring during the 15 months before the contract issue date or
23 redetermination date under par. (d). If the 5-year constant maturity rate is an
24 average monthly yield, the rate shall be as determined from consecutive monthly

1 yields published during the 15 months before the contract issue date or
2 redetermination date under par. (d).

3 2. One percent.

4 (d) The interest rate determined under par. (c) shall apply for an initial period
5 and may be redetermined for additional periods. The redetermination date, basis,
6 and period, if any, shall be stated in the contract. The basis is the date or average
7 over a specified period that produces the value of the 5-year constant maturity
8 treasury rate to be used at each redetermination date. The interest rate
9 determination under par. (c) shall be specified in the contract if the interest rate will
10 be reset.

11 (e) The present value at the contract issue date, and at each redetermination
12 date, of the additional reduction under par. (c) 1. for substantive participation in an
13 equity index benefit may not exceed the market value of the benefit. The
14 commissioner may require a demonstration that the present value of the additional
15 reduction does not exceed the market value of the benefit. The commissioner may
16 disallow or limit the additional reduction if the commissioner determines that the
17 demonstration is unacceptable.

18 (f) The commissioner may promulgate rules for the implementation of par. (e)
19 and to provide for further adjustments to the calculation of minimum nonforfeiture
20 amounts for contracts that provide substantive participation in an equity index
21 benefit and for other contracts for which the commissioner determines adjustments
22 are justified.

23 **SECTION 4.** 632.435 (5) of the statutes is amended to read:

24 632.435 (5) Any paid-up annuity benefit available under a contract shall be
25 such that its present value on the date annuity payments are to commence is at least

1 equal to the minimum nonforfeiture amount on that date. Such present value shall
2 be computed using the mortality table, if any, and the interest rate or rates specified
3 in the contract for determining the minimum paid-up annuity benefits guaranteed
4 in the contract.

5 SECTION 5. 632.435 (12) of the statutes is amended to read:

6 632.435 (12) After ~~November 8, 1977~~ the effective date of this subsection
7 [revisor inserts date], any company may ~~file with the commissioner a written notice~~
8 ~~of its election~~ elect to comply with this section ~~after a specified date on a contract~~
9 ~~form-by-contract form basis, for contracts newly issued,~~ before the 2nd anniversary
10 of November 8, 1977. ~~After the filing of such notice, then upon such specified date,~~
11 ~~which shall be the operative date of this section for such company~~ the effective date
12 of this subsection [revisor inserts date]. In all other instances, this section shall
13 become operative with respect to annuity contracts ~~thereafter issued by such~~
14 ~~company. If a company makes no such election, the operative date of this section for~~
15 ~~such company shall be~~ on or after the 2nd anniversary of November 8, 1977 the
16 effective date of this subsection [revisor inserts date].

17 (END)